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IN THE MATTER
OF
DUNCAN MACDONALD
CONTRACTOR
And the Quebec Government

REPORT
OF
WALTER SHANLY
REFEREE



THREE RIVERS
The Three Rivers Printing Company

1879.

1879
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REPORT
ON
Investigation of Matters in Dispute
BETWEEN
DUNCAN MACDONALD
AND THE
QUEBEC GOVERNMENT
ARISING OUT OF THE
CONTRACT OF 16 NOVEMBER 1875

By order in Council dated 21st September 1878 the undersigned was appointed to "make a complete examination of the respective claims of Duncan MacDonald against the Province of Quebec and of the Province of Quebec against the said Duncan MacDonald in order to establish a balance of accounts between the parties."—

A duly certified copy of the order in Council was transmitted to the Referee on 5th October, when he at once notified it to Mr. MacDonald, inviting him to open his case at the earliest moment that he could be prepared to do so.

On 7th October Mr. MacDonald replied signifying a qualified acceptance only, of the reference, because of provision not having been made for receiving testimony upon oath, but on being informed that his objection to, or only partial acquiescence in, the proposed examination rendered it impossible that the case could be proceeded with he subsequently, through his counsel, agreed to the proposition as embodied in the order-in-Council and there-upon, namely, on 17th October, the hearing was formally entered upon.

To make clear what the matters referred were it will be necessary to give a short history of the contracts and conditions under which the Western Section of what is now known as the « Quebec, Montréal, Ottawa, and Occidental Railway » has been built.

In 1869 a company was chartered under the name and style of « The Montreal Northern Colonization Railway Company » for constructing a Railway on the north side of the Ottawa River « towards the city of Ottawa, &c, &c. »

Four years later the charter was amended and enlarged empowering the Company to continue its line to the terminus of the « Canadian Pacific Railway. »

No decided measures were taken towards the construction of any part of the line until 1873, when, on 24 July in that year, the company made a contract with Duncan MacDonald of Montreal and Harry Abbott of Brockville, carrying on business under the name, style and firm of « Duncan MacDonald and Company », for the making of the railway from Montreal to Aylmer with a branch from Ste. Therese to the village of St. Jerome. The length of line so undertaken was estimated at 142 miles and the gross amount agreed to be paid to the contractors was \$4,224,500—being at the average rate of \$29,750 for each and every mile of completed Railway.

For the price or sum so stipulated to be paid the Bridges were to be of wood; the Rails iron; The Ballasting limited to 2000 cubic yards to the mile; and the quantity of Rolling stock as specified in a schedule appended to the contract. In all other conditions the road, generally, was to be « First Class, » after the standard of the Great Western Railway of Canada.

The kind of payment the contractors agreed to accept was a mixed one of Cash and Railway Bonds—in the proportion of about one of the former to four (nominal) dollars of the latter; the bonds being rated to them at seventy-five cents in the dollar only: That is to say—the \$4,224,500 were supposed to represent about the *Cash* value of the work and for the three million dollars which were to be paid in Bonds they (the Contractors) were in reality to receive one third more than that amount.

The sources whence the cash portion of the payment to the Contractors was to be drawn were the subsidies granted to or stock taken in, the railway by the city of Montréal and other municipalities interested in its construction.—

Subsequently to the making of the contract of 24 July 1873, namely in January 1874, the financial position of the " Montréal Northern Colonization Railway Company " became greatly improved through the passing of an Act by the Quebec Legislature enabling the government to substitute for a Land-Grant which the Company had previously held a Money-Grant of \$750,000. The transaction was *de facto* tantamount to the Government taking that amount of the Company's Bonds *at par*.

Under this Concession on the part of the Province the Contractors position was bettered in at least equal degree with the Company's, for it does not appear that the latter claimed any modification of the contract because of this conversion into current money of so large a proportion of the bonds which the former had agreed to accept.

The Cash they were to receive in payment for their undertaking being thus increased by three quarters of a million of dollars and their bond-payment proportionally lessened the Contractors could now count with certainty on receiving in money about \$1,800,000 leaving them with some three million dollars of bonds still to negotiate.

Under the Contract of 21 July 1873 « Duncan MacDonald and Company » carried on their work without marked interruption for about two years ; not, however, at a rate of progress to ensure its completion within the extreme date limited—1st. October 1875.

This insufficient progress was due to financial embarrassment. The three million of Bonds proved to be " inconvertible. " ; The senior partner in the firm (Mr. MacDonald) spent some considerable time in London seeking a market for the securities he had to offer but failed to find buyers. Sir Hugh Allen, President of the Company, next took the matter in hands, but with no better success. No takers were to be found for the Bonds of a railway to which was opposed the powerful influence of the Grand Trunk.

Company and Contractors having alike exhausted their resources the summer of 1875 found both, in respect of means to continue the works of the railway, practically insolvent ; the Contractors being burdened by large sums borrowed for the carrying on of their undertaking, and by debts due to Sub Contractors and others. A suspension of work naturally ensued, and then it was that the Government resolved on adopting the railway as a Provincial work.

In November 1875 a formal transfer of all its Rights, Franchises, and Properties was made by the Railway Company to the Government, and on the sixteenth same month the latter executed a contract with Duncan MacDonald, senior partner of the pre-existing firm of « Duncan MacDonald & Company », for the completion of the line from Montreal to Aylmer—including the St. Jerome Branch.

This Contract it is, and the matters in variance growing out of it, that have formed the subject of a six months investigation " in order to establish a balance of accounts between the parties." The results of that investigation the Referee will now proceed to report.—

The contract of 16 November 1875 between the Government and Mr. MacDonald contains certain unusual and peculiar features and provisions: Besides providing for the finishing of the work still to be done when the suspension of operations under the original contract took place it was also retro-active in its affect. The Government went back, so to speak, and assumed the undertaking and its responsibilities from the very commencement of the work under the Northern Colonization Railway Company's Charter.—

By the terms of the new contract, the contractor, Duncan MacDonald, individually, undertook that the completed railway should cost, from first to last, just \$3,601,649.95

Out of this amount he was to pay, or, as seems to have been understood, allow the Railway Commissioners to pay Duncan MacDonald and Company's liabilities for work done previous to 6 November 1875, and also he was to give the Government credit for the cash payments his former firm had received previous to that date from the Railway Company, as so much paid to himself, individually, on account of the new contract.

A schedule attached to and forming an integral part of the new contract set forth in detail, the *quantities* of work and properties involved in the construction and furnishing of the whole line. That schedule assumed that there were, originally, so many cubic yards of Earth and Rock to be excavated and removed: so many cubic yards of Masonry to build: &c., &c.—

A certain sum in bulk was set apart as the assumed probable cost of Right-of-Way: and certain other bulk sums, in like manner, to provide for the erection of buildings and the payment of Engineering expenses.—The numbers of Engines and cars were specified with the prices at which, on delivery, they were to be rated to the contractor.—By "figuring" all the quantities and properties at the prices, or rates, set over against each in the Schedule, and adding the "lump" sums referred to, the gross amount of the contract was made to be..... \$3,601,649.95.

But the whole of this sum was not in reality applicable to the work of

construction: It was made subject, at the very outset, to a deduction of
 \$57,149.95

Which was the amount the Government agreed to pay the Railway Company for the transfer of its Rights and Franchises and which the former then made a charge upon MacDonald's contract,—*why* is not, from a business point of view, easily understood. The practical effect upon the contract, or, rather, upon the contractor—was to reduce by about one and a half per cent the price affixed to each item in the Schedule-of-Rates, each one of which thus became, as indicating what was to be paid for each description of work, to that extent fictitious. In other words the gross sum MacDonald was to receive for the whole work and furnishing of the railway was not
\$3,601,649.95 but..... \$ 3,544,500

One of the first steps to give effect to the contract between MacDonald and the Government was the "settling up" for the work done by Duncan MacDonald & Company under the contract of 24 July 1873. The 5th clause of the new contract specially provided that the Government Engineer should ascertain the quantities of all work done and materials delivered up to the time of making the said new contract, namely 16 Nov. 1875, and that the money-value of the quantities so certified should be fixed by applying to them the prices determined in the said new contract for each denomination of work and properties.—

The valuation of "the old work" so ascertained was then to be placed to the credit of the contractor who was at the same time to be debited with all moneys paid his late firm by the late Railway Company, and any balance found to be due, after the Government had satisfied such claims as it might have become responsible for, was to be paid to the contractor, Duncan MacDonald.—

The Railway Commission did not, however, act strictly up to the provisions of clause 5. They undertook themselves to pay the Contractor's liabilities and did so without reference to what the balance coming to Mac-

Donald might be. When all was done the account for "the old work" stood as follows:—

Cr : New valuation of old work.....\$1,292,803.94

Dr : Cash paid Duncan MacDonald }
 & Co by Northern Coloniza- }
 tion Railway Company..... } \$793,452

Balance due to Contractor \$499,361.94

The Commissionners paid Claims }
 against the old work to the amount of } \$866,090.00

Paid in excess of Balance found to be due..... \$366,638.06

The *quantities* which form the basis of Mr. Peterson's (the government Engineer's) valuation are not widely different from those previously certified by Mr. Legge Chief Engineer of the Northern Colonization Railway Company.

But the *prices* used by Mr. Peterson and those used by Mr. Legge in determining the *value* of the *quantities* were very far apart: so much so as to result in a money difference between the two estimates of nearly \$330,000

Mr. Peterson, as by clause 5 of the new contract he was bound to do, adopted the schedule prices of that agreement, and which were strictly *cash* prices.

Mr. Legge, equally of course, had taken as the basis of his valuation the *old* contract rates, which were very much higher than the substituted rates in the new instrument and which, also, it must be remembered, were payable not all in current money but in large proportion in railway bonds.

This discrepancy between the results of the two methods of valuation forms a leading point in the claims now made by Mr. MacDonald against the Government. Notwithstanding the clear wording upon this subject of the agreement of 16th Nov. 1875 he holds that "the understanding" was that he was to receive credit in account for the old work at its original, and higher, valuation.

It is not of record that Mr. MacDonald set up this claim at the time of Mr. Peterson's valuation being made (early in 1876) — or that he entered any protest against its adoption. It would have been hard to do so logically in the face of the very plain wording of clause 5, of the then newly made contract. Besides, practically, the Railway Commissioners made no account of the new valuation, for, as has been shown, the sum they paid out for liabilities accrued upon, added to moneys paid to Duncan MacDonald & Co by the Railway Company on account of, the old work exceeded by many thousands of dollars the highest estimate of its value.—

But for all that, though nothing was said about it at the time, the course pursued in the closing-up of old work matters proved to be the beginning of trouble for the new.

Under the terms of the contract with the Government the whole cost of the Railway from the turning of the first sod in 1873 to its final completion in 1877 was to be limited to, in round numbers, \$83,601,650.

The settlement for the old work)	
took clean out of that amount be-)	
fore the work had been begun even.)\$1,659,542

There then remained "in the Treasury" \$1,947,108

But from this again there was to be taken the)	
sum paid to the N. C. Railway Company.....)\$ 57,150

Leaving to complete the work..... \$1,889,958

The question "was this sum sufficient for the purpose?" can be answered off hand and in the negative—It was not sufficient by close upon

\$700,000 to complete the work still to do when the Government contract of 16 Nov. 1875 was executed ; The fact being that the quantities of excavation masonry, &c. &c. on which that contract was based were fallacious ; assumed not real. Nearly all the items depending for their accuracy upon measurement, and others as well, proved, after the work had been done and "footed up" in 1878, to be largely, in some instances enormously, in excess of what had been guessed at in 1875 : while of the bulk sums set apart for certain purposes, that for Right-of-way (\$150,000) over-ran, or will eventually over-run, by, probably, \$300,000, and Engineering rated to cost.....\$120,000

reached the amount of\$175,000

In brief summation of the "financial situation" as developed in the foregoing figures—When the Railway Works were recommenced in 1876 the contractor in order to carry out the engagements he had entered into with the Government on 16 Nov. previously, and being held strictly to them, should have been in a position to provide from his own means and resources some *seven hundred thousand dollars* beyond what the Government had agreed to give and he to accept for the completed railway.

Few contractors could have been found able, none willing, to fulfill so burdensome an obligation, and in this particular case the consequences of Mr. MacDonald's *folle enchère* very speedily began to make themselves felt. The estimates, predicated upon assumed, not real, quantities being insufficient to keep pace with outlay the work flagged for lack of nourishment : Sub contractors ; Laborers : and suppliers of all classes were short paid or not paid at all : Dissatisfaction was rife all along the line : The Government Engineer and Contractor were not in accord, and before the work had been six months in progress (after recommencement) it became evident that something entirely beyond what the contract provided for would have to be done.

That something was done towards the close of the year (1876) by the passing of an act. (40 Viet. Cap. III) two sections of which Nos. 10 & 11 were designed specially to provide for the difficulties growing out of the Contractors inability to fulfil his obligations. The sections in question read as follow :—

Sect 10 "The Commissioners of the Quebec, Montreal, Ottawa and Occi-

dental Railway guarantee the payment of the amounts of the sub contracts made by Duncan MacDonald, the contractor for the Western portion of the said road, provided that such contracts are approved by them."

Sec 11 " The said Commissioners are authorized to take from the sum intended to meet the contingent expenses of the road the sum necessary to complete the said railway.

From the date of the passing of the above Act the commissioners took upon themselves the burden of investigating and paying all accounts and estimates in connection with the contract ; MacDonald, the contractor, being, in effect, relegated into the position of an Agent, or Intermediary, between the Commissioners and the sub-contractors and the work-men, and there is proof in the documentary evidence laid before the Referee that thenceforward no special care was taken on either side to keep expenditure within properly economical bounds; each partly seeming to consider the responsibility of the cost as resting on the other. The results have been—Injudicious outlay : great confusion of accounts ; and a large number of claims held by sub-contractors and others who look to the Government to hold them harmless because of the Railway Commissioners, under authority of the Act quoted above, having, by inference, at all events, where not directly, guaranteed their contracts or wages.—

It is hardly necessary to pursue further the chain of events which, step by step, and inevitably, led up to the differences and disagreements which have rendered it necessary to make the question involved a matter of special reference with a view to elucidation and adjustment. The contractor, as might have been expected, makes large claims against the government, and on various counts. He claims payment for the quantities of work done in excess of the quantities scheduled in the contract. He claims large sums for works extra to and outside of the contract. He holds that he has suffered heavy pecuniary damages through obstacles and detentions needlessly put in his way by government officials : Also that the mode adopted for valuing the " old work, " though verbally in accord with the agreement to that end in

the new contract, is not what was in reality intended, and that its operation has been unjustly to keep back a large sum of money long since due him.

The sum paid by the Government to the Northern Colonization Railway Company (\$57,150) should not Mr. MacDonald alleges, have been charged to him at all notwithstanding that the 22d Clause of his contract specially provides for its being so charged :—And, lastly, he claims that the intent and meaning of the 11th Section of the Act 40 Viet. Cap. 111 was to make a large money-addition to the gross amount of the contract and that though not specifically stated in the act the amount so to be added was well known and understood at the time to be the exact sum of \$466,000

The following is a Summary of the claims submitted.

1. Value of work under old Contract	\$1,640,491
2. Do Do New do.....	2,553,741
3. Extra works.....	315,903
4. Damages	300,000
5. Amount paid to N. C. Railway Co ;	57,150
6. Addition Claimed under Act of 1876	466,000
	<hr/>
	\$5,333,285

Making an excess over the gross specified amount of the contract (\$3,601,650) of \$1,731,635, and in this is not included the finishing of the railway.

On the line being finally taken out of the Contractors hands, on 1st September 1878, it was still *unfinished* to the extent of about *half a million of dollars*.

The details of the foregoing six items of claim are embodied in the Appendices accompanying this Report and as such of the details or sub-items as require special comment are therein minutely analysed, and the mode of dealing with, and reasons for rejecting or adopting, them explained *in extenso*, it is unnecessary to do more here than touch generally upon those of them

deemed worthy of liberal consideration and to dismiss as uselessly encumbering the investigation such as should not be entertained at all.

No. 1. In claiming that the old work should from the first have been valued to him at the old contract prices Mr. MacDonald has made a palpable error. In his contract with the Government he deliberately and adversely, if indiscreetly, agreed to the mode of valuation which he now complains of as an injustice. The wise course, when he found that the agreement acted hardly and onerously upon him, as assuredly it did, would have been to have asked for a reconsideration on equitable grounds. In the recommendations hereinafter made in this Report it will be dealt with from that point of view.

No. 2. The mode of estimating the work done under the new contract is the ground-work of this claim but while in claim No. 1 a question of *prices* only is involved here the real point at issue is a to *quantities*. Not that there are any material differences between the Government Engineer and the contractor's Engineer as to the actual quantities of work done, but those quantities, as has already been stated, largely overran the assumed quantities on which the bulk amount of the contract was based. The contractor claims payment for every thing he did: the Government Engineer (and he certainly had no option in the matter) says—“No; I must so shape my Estimates that the cost of the railway completed according to contract shall not exceed the contract sum of \$3,601,650.” The contention raises an important question which will be considered further on from the Referee's point of view.—

No. 3. Extra Work. This claim in 64 items (No. 55 to 116 and 125 126 Appendix C,) amounts to \$315, 13. The larger proportion of the items are wholly inadmissible for reasons given in the appendix; and after a thorough sifting the amount recommended as allowable is..... \$97,52.

No. 4 Damages. Under six separate headings (Nos. 117 to 122 Appendix C.) “Damages” are alleged to have been done the contractor to the amount of \$300,000. For no one item in the list has any proof been offered and with the exception of a small sum against No. 119 the whole claim is invalid. For analysis and reasons see Appendix. As illustrating the utter unsoundness of the claim it may be stated here that \$80,000 of it

are for alleged "delays" put in the way of "Ballasting": The sub-contractors who did the ballasting estimate the delays at less than \$4,000; and the whole ballasting of the whole line completed according to contract would only have amounted to..... \$75,000.

No. 5. Amount paid Montreal Northern Colonization Railway Company for its Rights and Franchises and charged against the contract,—\$57,150. The contractor agreed that this payment should be made a charge upon his contract; Nevertheless he now claims that it should not have been so charged; again making the mistake of exacting as a right what he should have asked as a concession. In "establishing a balance of accounts between the parties" the Referee is of opinion, that this item should be eliminated from the contractor's account altogether.—

No 6. Amount claimed to have been added to the contract by the Act of 1876..... \$ 466,000

While the Railway Commissioners do not admit that the Act quoted (Sec. II) was intended to add anything permanently to the contract sum they *acted* as if it did so

The whole contract sum was \$3,601,650

When the Railway was taken out of the contractors' hands 1st Sep. 1878, there was contract work still to do to the value of upwards of..... \$ 500,000

Therefore in the strict letter of the contract the }
value of the work done was..... } \$3,101,650

But the Railway Commissioners had paid about..... \$3,970,000

Excess of payment over contract value of work done..... \$868,350

A large amount to pay away without "authority of parliament" and in assuming the responsibility the commissioners must, it is fair to suppose, have had some confidence that, pleading "justification," they would be

sustained and indemnified. Careful reading of section II of the Act on which the contractor founds this claim leaves it difficult to give to its somewhat involved wording any other interpretation than that of pointing out to the Commissioners a certain other *caisse* than that in which was kept what remained of the original grant of \$3,601,650, whence could be drawn other moneys to apply to the completion of the railway works.

The Order in Council submitting the matters in variance to special investigation admits, in effect, that to arrive at a final adjustment of claims and accounts the contract would have in a measure to be set aside, literally interpreted and strictly enforced, if that were possible, there would be nothing to adjudicate upon. It requires that the contractor for a certain specified sum shall do any thing and every thing, in relation to the 140 miles of road with which it deals, that the Government might see fit to demand of him—whether specified or not. It is a one-sided instrument bearing inequitably, on the weaker party, who, in order to have fulfilled all the obligations he weakly undertook, would have had to find from other sources than the contract provided him with at least three quarters of a million dollars. Contracts so drawn miss the objects at which they aim and instead of closing the door to disputes and litigation are more often the means of engendering them. Treating the oppressive clauses, then, as of no force or effect equity practice is adopted throughout in offering the subjoined conclusions.

The first Claim in the contractors Schedule is :

That work done under the old contract should have been valued to him at old contract prices notwithstanding that in the new contract he agreed to accept the new-price, and lower, valuation for all work. The difference between the two modes of estimating would be about..... \$350,000

The old contract prices were to a certain extent based upon the fact of payments being largely in bonds : Consequently some of them, treated as *Cash* prices, would be extravagantly high.

The new contract provides for a lower, nominal scale of prices but *all cash*, and considering the fallen values of labour and materials taking place about the time of the making of that contract (1875) and the low prices since

ruling, these new contract rates are generally fair and remunerative for the several kinds of work to which they apply.

But they would have been insufficient prices in the inflated times of 1873 and 1874 when the work was being carried on and to estimate that work by their standard in 1876, as the Contract states shall be done, was a grinding condition for the stronger party to exact, and a foolish one for the weaker to accede to.

Besides.—The work under the old contract was done under trying financial conditions. Payments, at first uncertain and irregular, were at last wholly suspended; Large borrowing was had recourse to and, altogether, thrifty and economical management was rendered impossible and the general result—excessive cost of works.

The first financial act of the Railway Commissioner (in 1876) was the paying off of arrears and liabilities for the old work and in doing so they took no account of the new and lesser mode of valuation but paid in accordance with—in fact in excess of—the old and higher one; thus practically recognizing, in advance of its being made, MacDonald's claim on this

Cutting down the extravagant prices in the old contract-Schedule to fair proportions and allowing all others to stand at their original figures, the old work so valued amounts to..... £ 1,576,010.

And it is recommended that it be allowed

FOR DETAILS SEE APPENDIX "A"

—o—

SECOND for consideration stands the claim founded on the quantities that should rule in determining the value of the work done since (in 1875) the Government adopted the railway. It has already been noted that the bulk money-amount of the contract was arrived at by assuming certain quantities of the several kinds of work involved in the finishing of

the line. The quantities suggested at proved to be so widely wrong that the discrepancies between original assumption and after-proven fact could not with any pretence of fairness be explained away by the common legal saving term "more or less." A contract conceived in ignorance and giving immense advantage to one side while imposing ruin on the other would seem to be weak even in law: *Equity* would set it aside without any show of respect. The true quantities of work done should be paid for at the rates or prices fixed by the contract for the valuing of progress work; so estimated the new work would amount to £ 2,347,275

And should be allowed.

SEE APPENDIX " B "

—o—

THIRD Extra Work. Amount claimed..... £ 315,903

Straining liberality to the utmost all that the Referee can recommend for recognition under this caption from the 64 items comprised in this claim, with a small addition under the head of " Damages, " is..... £ 97,052

But in reality more than the above proportion of the total claim for " Extra work " is allowed : several of the items if passed as " extras " would be found doing duty twice over, being already included in the general estimate, APPENDIX " B ".

SEE APENDICES " C " AND " C. C. "

Items 55 to 116 and 119, 125, 126,

—o—

FOURTH. This Item in the contractor's Schedule..... \$ 300,000.

for Damages alleged to have been sustained, being wholly unsupported by proof, except as to a small amount in the Third Claim above, should be disallowed peremptorily. Details and analysis of the Claim are in

APPENDIX " C "

Items 117 to 122 inclusive.

— o —

FIFTH. Amount paid to Northern Colonisation Railway Company by the Government \$57,150

This amount has been charged in the Railway Commissioners Books against Mr. MacDonald as by the contract it is declared it should be. But if the equitable mode herein recommended for " establishing a balance of accounts between the parties " be adopted then this item *naturally* ceases to be a charge upon the work and the amount now standing against the Contractor must be lightened by so much.

SIXTH. The sum claimed to have been added to the Contract by the Act 40 Vict. Cap III \$466,000.

The Railway Commissioners practically admitted this claim by paying it ; but as in the mode of settlement herein recommended it is covered by the General Estimate Appendix " B ", it must be struck out here and cease to have from as a distinct and separate claim, or recommendation.

The foregoing six headings comprise all the claims put forward under cover of the contract.

There are however certain other items—for moveable properties upon the line when taken possession of by the Government &c : and for the principal of which the commissioners had then already made payments on account.—

These items have been examined and verified, and the amount considered to be due upon them is submitted, with details.

IN APPENDIX "D"

Whole amount so found to be due..... \$30,629.

—o—

In the Balance Sheet, herewith (Appendix E), will be found credited to the contractor certain other items than those above recommended. They are sums not properly chargeable to, but which have been charged against, the contract. Take, for instance, the item of cordwood: The amount paid by the commissioners on account of that article—(\$13,200)—stands in their books today against MacDonald, while in point of fact it has nothing to do with the construction contract and has, since the line was taken out of his hands, been dealt with and finally settled for as a distinct account and therefore must now be taken out of his general debit.

The other "Sundry" items appearing on the credit side of the Balance Sheet will explain themselves.

—

A Balance struck upon the plan recommended for the adjustment of accounts shows the government indebted to MacDonald in the sum of..... \$150,925.

—

CLAIMS AGAINST THE CONTRACTOR.

There now remain to be dealt with the claims of the Sub-Contractors and others against the Chief-Contractor an *implied* guarantee of which, at all events, is given by the Government in the Act 40 Viet Cap III Section 10.

These claims are classified, Appendix "F" here with, under two headings :

No. 1 These agreed to between M. MacDonald and the claimants.
They are 33 in number and amount in money to..... \$79,775,13

No. 2. Claims which have been filed with the Referee but which MacDonald declines to recognize. There are 38 of these amounting in the aggregate to..... \$51,223,86

The Government, doubtless, in dealing with any money of Mr. MacDonald's that may prove to be in its hands will not admit or pay claims the justness of which has not been established, or which are still in dispute.

Included in this **No. 2 Schedule** is the claim of Mr. H. Abbott, partner in the former firm of Duncan MacDonald & Co in the Contract with the Northern Colonization Railway Company.

The claim as filed, amounts to..... \$34,651,56

And special reference is made to it in the contract (Clause 21) between MacDonald and the Government with a view to saving the rights of Abbott and at the same time protecting the Government from any recourse he might possibly have against it. The case has long been in litigation between the former partners and it would seem important that before making a final settlement with Mr. MacDonald Government should take care to be relieved from any possible future liability to Mr. Abbott.

One other class of claims remains to be noticed. They are those which have long been on file in the Bureau of the late Railway Commissioners but concerning which no applicants have appeared in the course of the investigation now being brought to a close. Mr. MacDonald either wholly ignores

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these claims or pronounces them long since settled, or in some fashion finally disposed of. In any case they would seem to be no longer "active" and further reference to them is deemed unnecessary here.

The whole respectively submitted.

W. SHANLY,

Referer

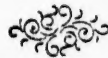
Montreal, 8th May 1879.

To the HON. H. G. JOLY,

Commissioner Public Work.

&c., &c.

QUEBEC.



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